



103787

IN THE MATTER OF:

Barry Bronze Bearing Company Site, City of  
Camden, Camden County, New JerseyBarry Bronze Bearing Company, Inc., Paul J.  
DeCoursey, Jr., and Clifford J. DeCoursey,

SETTLING PARTIES.

.....

) SETTLEMENT AGREEMENT FOR  
) RECOVERY OF RESPONSE COSTS) U.S. EPA INDEX NO.  
) II-CERCLA-02-2009-2012) Proceeding under Section 122(h)(1)  
) Comprehensive Environmental  
) Response, Compensation, and Liability  
) Act of 1980, as amended, 42 U.S.C. §  
) 9622(h)(1).  
)

**Barry Bronze Bearing Company Site  
Camden County, New Jersey  
Settlement Agreement for Recovery of Response Costs**

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## **I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and redelegated to the Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, by Regional Order R-1200, dated November 23, 2004.

2. This Settlement Agreement is made and entered into by EPA and Barry Bronze Bearing Company, Inc., Paul J. DeCoursey, Jr., and Clifford J. DeCoursey (the "Settling Parties"). Settling Parties consent to and will not contest EPA's jurisdiction to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. U.S. EPA FINDINGS**

3. This Settlement Agreement concerns the Barry Bronze Bearing Company Site (the "Site") located in the City of Camden, Camden County, New Jersey. The Site is over .6 of an acre in size and includes the Barry Bronze Bearing Company, Inc. foundry located at 2204 South 7<sup>th</sup> Street, City of Camden, New Jersey as well as Bulson Street which is adjacent to the foundry. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. Barry Bronze Bearing Company, Inc. ("Barry Bronze") owned and operated a foundry at 2204 South 7<sup>th</sup> Street, City of Camden, New Jersey, from 1928 until August 1997 when it ceased all operations at the foundry. Paul J. DeCoursey, Jr., is the sole shareholder and President of Barry Bronze. Clifford J. DeCoursey was the Vice-President of Barry Bronze.

5. A variety of metal bearings and castings were produced at the foundry. Barry Bronze used metals, including copper, lead and tin, to create alloys which were then molded into castings. Metals-containing, spent sands were a byproduct of operations at the foundry.

6. The foundry is bordered on the north by Bulson Street which is unpaved. Metals-contaminated, spent sands were dumped along Bulson Street.

7. In April 2004, EPA initiated a Removal Site Evaluation ("RSE") and collected samples from both inside the foundry and along Bulson Street. Metals, mainly lead and arsenic, were detected at elevated levels in samples collected from both inside the foundry and along Bulson Street.

8. Approximately 150 soil samples were collected by EPA along Bulson Street. Sampling results revealed significant concentrations of lead contaminated soil along Bulson Street with lead levels as high as 3,058 parts per million detected in some samples.

9. EPA determined, based on the RSE, sampling results and other information, that the Site soils posed a health threat and warranted a CERCLA removal action.
10. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook removal actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.
11. In performing this removal action, EPA incurred response costs at or in connection with the Site.
12. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are liable for response costs at the Site.
13. EPA and Settling Parties desire to resolve Settling Parties' alleged civil liability for Past Response Costs without litigation and without the admission or adjudication of any issue of fact or law.
14. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law.

### **III. PARTIES BOUND**

17. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Parties including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Parties' responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. DEFINITIONS**

18. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

- a. "Settlement Agreement" shall mean this Settlement Agreement.
- b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

- d. "Effective Date" shall mean the effective date of this Settlement Agreement as provided in Section XVI (Effective Date and Subsequent Modification).
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an arabic numeral or a lower case letter.
- h. "Parties" shall mean EPA and the Settling Parties.
- i. "Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA incurred or incurs at or in connection with the Site.
- j. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- k. "Settling Parties" shall mean Barry Bronze Bearing Company, Inc., Paul J. DeCoursey, Jr., and Clifford J. DeCoursey, their heirs, successors and assigns.
- l. "Site" shall mean the Barry Bronze Bearing company Site, which consists of over .6 of an acre in size and includes the Barry Bronze Bearing Company, Inc. foundry, located at 2204 South 7<sup>th</sup> Street, City of Camden, New Jersey, and Bulson Street which is adjacent to the foundry and other adjacent properties where hazardous materials came to be located from the Barry Bronze facility.
- m. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### **V. REIMBURSEMENT OF RESPONSE COSTS**

19. Within 30 days of the Effective Date of this Settlement Agreement, Settling Parties shall pay to EPA Hazardous Substance Superfund, One Hundred and Fifty Thousand dollars (\$150,000.00) in reimbursement of Response Costs.

20. All payments to the EPA under this Section shall indicate that the payment is for Response Costs and shall be remitted via Electronic Funds Transfer ("EFT"), along with the following information, to EPA's account with the Federal Reserve Bank of New York as follows:

- i. Amount of Payment: Indicate Amount
- ii. Title of Federal Reserve Bank account to receive the payment: EPA
- iii. Address of Federal Reserve Bank account to receive the payment: 33 Liberty Street, New York, NY 10045
- iv. Account code for Federal Reserve Bank account receiving the payment: 68010727
- v. Federal Reserve Bank ABA Routing Number: 021030004
- vi. Name of Party(ies) making payment
- vii. A message in Field Tag 4200 of the EFT that reads "D 68010727 Environmental Protection Agency"
- viii. Site/Spill Identifier Number: UX
- ix. Swift Address: FRNYUS33

21. At the time of payment, Settling Parties shall also send notice that payment has been made to the following addressees:

U.S. Environmental Protection Agency  
26 W. Martin Luther King Drive  
Attention: Finance  
MS: NWD  
Cincinnati, Ohio 45268  
[AcctsReceivable.CINWD@epa.gov](mailto:AcctsReceivable.CINWD@epa.gov)

Juan M. Fajardo, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
United States Environmental Protection Agency, Region II  
290 Broadway - 17<sup>th</sup> Floor  
New York, NY 10007-1866  
[Fajardo.juan@epa.gov](mailto:Fajardo.juan@epa.gov)

#### **VI. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

22. In the event that payment required by Paragraph 19 is not made when due, Interest shall accrue on the unpaid balance through the date of payment.

23. If any amount due to EPA under Paragraph 19 is not paid by the required date, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA a stipulated penalty of \$100 per violation per day that such payment is late. Stipulated penalties are in addition to Interest required by Paragraph 22 of this Settlement Agreement.

24. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in accordance with Paragraphs 20 and 21 of this Settlement Agreement.

25. Stipulated penalties shall accrue as provided in this Section regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

26. In addition to Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Settling Parties' failure to comply with the requirements of this Settlement Agreement, if Settling Parties fail or refuse to comply with any requirement under this Settlement Agreement, Settling Parties shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement and is successful in such action, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

27. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement.

## **VII. COVENANT NOT TO SUE BY EPA**

28. Except as specifically provided in Paragraph 29 (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9607 and 9607(a), with regard to the Site. This covenant shall take effect upon receipt by EPA of all amounts required by Sections V (Reimbursement of Response Costs) and any amounts due under Section VI (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of its obligations under this Settlement Agreement. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

## **VIII. RESERVATIONS OF RIGHTS BY EPA**

29. The covenant not to sue by EPA set forth in Paragraph 28 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant other than at the Site; and
- e. liability for costs incurred by the United States as a result of any future disposal or release of a hazardous substance at the Site which disposal or release is directly caused by some action taken by the Settling Parties after the effective date of this Settlement Agreement.

30. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

#### **IX. COVENANT NOT TO SUE BY SETTLING PARTY**

31. Settling Parties covenant not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of the response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of New Jersey, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

32. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).



## **X. EFFECT OF SETTLEMENT/CONTRIBUTION**

33. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA and Settling Parties each reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

34. EPA and Settling Parties agree that the actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability by Settling Parties. Settling Parties do not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in Section II (U.S. EPA Findings) of this Settlement Agreement.

35. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and that Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all Response Costs incurred, or which may be incurred, at or in connection with the Site by the United States. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with Settlement Agreement), in the event that EPA asserts rights against Settling Parties coming within the scope of such reservations.

36. Settling Parties agree that with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Settling Parties also agree that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Parties shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

37. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of Response Costs, or other appropriate relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata,

collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 28.

## **XI. RETENTION OF RECORDS**

38. Until 3 years after the Effective Date of this Settlement Agreement, Settling Parties shall preserve and retain all records of this Settlement Agreement and shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or for the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

39. By signing this Agreement, Settling Parties certifies that, to the best of their knowledge and belief, they have:

- a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;
- b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Parties regarding the Site;
- c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. Sections 9604(e) and 9622(e); and
- d. provided, or will provide, EPA with all documents pursuant to Paragraph 38 above.

41. After the effective date of this Settlement Agreement, the Settling Parties shall provide EPA and its contractors at all reasonable times access into any portions of the Site which are under the possession or control of the Settling Parties (including access into the Barry Bronze facility) when requested by EPA to perform any actions authorized under CERCLA or any other Federal law.

## **XII. NOTICES AND SUBMISSIONS**

42. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their

successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

On-Scene Coordinator  
Barry Bronze Bearing Company Site  
Removal Action Branch  
Emergency and Remedial Response Division  
2890 Woodbridge Avenue  
Building 209  
Edison, NJ 08837

Site Attorney  
Barry Bronze Bearing Company Site  
Assistant Regional Counsel  
Office of Regional Counsel  
United States Environmental Protection Agency, Region II  
290 Broadway - 17<sup>th</sup> Floor  
New York, NY 10007-1866

As to Settling Parties:

Francis X. Ryan, Esq.  
Green, Lundgren & Ryan, P.C.  
Attorneys At Law  
1010 Kings Highway South  
Cherry Hill, NJ 08034

### **XIII. INTEGRATION**

43. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

### **XIV. PUBLIC COMMENT**

44. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

**XV. ATTORNEY GENERAL**

45. This Settlement Agreement is subject to the approval of the Attorney General or his/her designee in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

**XVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

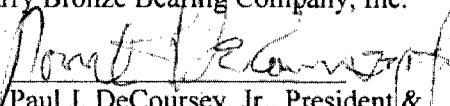
46. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice to Settling Parties that the public comment period pursuant to Paragraph 44 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED:

In the Matter of Barry Bronze Bearing Company Site Administrative Settlement Agreement U.S. EPA docket number II-CERCLA-02-2009-2012

For Barry Bronze Bearing Company, Inc.

By:

  
Paul J. DeCoursey, Jr., President &  
Sole Shareholder  
Barry Bronze Bearing Company, Inc.

Date

3/16/09

For Paul J. DeCoursey, Jr.,

By:

  
Paul J. DeCoursey, Jr.

Date

3/16/09

For Clifford J. DeCoursey

By:

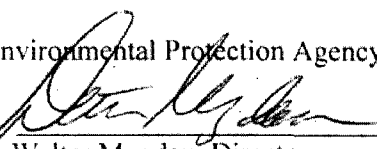
  
Clifford J. DeCoursey,

Date

3/16/09

U.S. Environmental Protection Agency

By:

  
Walter Mugdan, Director  
Emergency and Remedial Response Division  
U.S. EPA, Region 2

Date

3/31/2009



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1868**

MAR 31 2009

Mr. Ronald J. Tenpas  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 2143  
Washington, D.C. 20530

**Re: Barry Bronze Bearing Company Site, Camden, New Jersey**

Dear Mr. Tenpas:

Enclosed for approval by the Department of Justice ("DOJ") is an Administrative Settlement Agreement and Order on Consent ("Agreement") between the United States Environmental Protection Agency ("EPA") and Barry Bronze Bearing Company, Inc., Paul J. DeCoursey, Jr., and Clifford J. DeCoursey (the "Settling Parties"). The proposed Agreement is being issued pursuant to Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9622.

The Barry Bronze Bearing Company Site (the "Site") is located within the City of Camden, Camden County, New Jersey. EPA performed a removal action at the Site and incurred at least \$407,213 in response costs. The Agreement requires the Settling Parties to pay EPA \$150,000 to settle their potential liability with respect to the Site.

Pursuant to Section 122(h)(1) of CERCLA, EPA requests that you provide EPA with written approval of the Agreement. Brian Donohue, Esq. of your staff has worked on this matter and is familiar with it. If you have any questions regarding this matter, please have your staff call Juan M. Fajardo of Region 2's Office of Regional Counsel at (212) 637-3132.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter Mugdan".

Walter Mugdan, Director  
Emergency and Remedial Response Division

Enclosure

cc     Bruce Gelber, Chief  
         Environmental Enforcement Section  
         U.S. Department of Justice (w/o enclosures)

         Brian Donohue, Esq.  
         Environmental Enforcement Section  
         U.S. Department of Justice (w/ enclosures)

bcc:   N. DiForte, ERRD  
         J. Fajardo, ORC